

ESTTA Tracking number: **ESTTA592328**

Filing date: **03/13/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058470
Party	Defendant BioGaia AB
Correspondence Address	DAVID A HARLOW MANNING FULTON & SKINNER PA 3605 GLENWOOD AVENUE, SUITE 500 RALEIGH, NC 27612 UNITED STATES harlow@manningfulton.com
Submission	Answer
Filer's Name	David A. Harlow
Filer's e-mail	harlow@manningfulton.com
Signature	/David A. Harlow/
Date	03/13/2014
Attachments	Answer to Petition Cancellation07049020140313135533.pdf(101894 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No.
3,398,673
Date of Issue: March 18, 2008

GAIA HERBS, INC.)	
)	
Petitioner,)	
v.)	
)	Cancellation No.: 92058470
BIOGAIA AB, LLC)	
)	
Registrant.)	
)	

ANSWER TO PETITION FOR CANCELLATION

Registrant BIOGAIA AB, answers the Petition for Cancellation of Petitioner, Gaia Herbs, Inc., as follows

1. Registrant admits that Petitioner is a grower and producer of herbal remedies, some of which are certified as organic, and some of which have been produced or sold as early as 1993. Except as specifically admitted, the allegations are denied.
2. Registrant admits that Petitioner has one or more U.S. federal trademark registrations for marks which contain the word GAIA as part of the mark. Except as specifically admitted, the allegations are denied. Registrant specifically denies that all of the marks alleged as registrations are in fact registrations.

3. Petitioners allegations are vague and ambiguous inter alia in that they conflate registrations and applications, and are based on references to allegations in the preceding paragraph which are denied. Registrant therefore denies same.
4. Registrant admits that Petitioner has been selling at least some of its goods under the GAIA mark for some years, and that it sells its goods in the United States. Except as specifically admitted, the allegations are denied.
5. Registrant admits that Petitioner sells a number of herbal remedies, some of which are purported to aid the digestive function. Except as specifically admitted, the allegations are denied.
6. Denied.
7. Registrant BioGaia AB admits that it is a Swedish limited liability company with an address as alleged. The Registrant does not use the term "LLC" in its official name.
8. Registrant admits that the filing date for the trademark application which matured into its U.S. Registration No. 3,398,673 is July 4, 2006. However, Registrant's date of first use in the United States of its house mark BIOGAIA is believed to date to 1990. Registrant's first use of its BIOGAIA mark for goods in the nature of those which are named in its 3,398,673 registration dates to 1999, and has been in continuous use since.
9. Registrant is without knowledge as to when Petitioner first became aware of Registrant's mark BIOGAIA, and therefore denies the allegations of paragraph 9. Registrant first used the mark in the United States as set forth above, and first used the mark in the trade dress alleged in this paragraph in 2006.
10. Denied.
11. Denied.

12. Denied.

AFFIRMATIVE DEFENSES

1. The Petition for Cancellation fails to state a claim upon which relief may be granted.
2. The Petitioner is not entitled to maintain this Petition for Cancellation of Registrant's mark by reason of estoppel, laches and/or acquiescence. Registrant's mark has been in open, continuous and extensive use throughout the United States for more than five (5) years prior to the filing of this action, to the actual or constructive knowledge of the Petitioner.

WHEREFORE, Respondent prays the Petition for Cancellation be dismissed.

Respectfully submitted this the 13th day of March 2014.

/David A. Harlow/

David A. Harlow

NCSB # 1887

USPTO #: 37,146

MANNING, FULTON & SKINNER, P.A.

P. O. Box 20389

Raleigh, NC 27619-0398

Telephone: (919) 787-8880

Facsimile: 919-325-4659

Email: harlow@manningfulton.com

Counsel for Registrant BIOGAIA AB

Certificate of Service

I hereby certify that on this day a true and correct copy of the foregoing document has been served this day by depositing a true copy thereof in a depository under the exclusive care and custody of the United States Postal Service in a first class postage prepaid envelope and properly addressed as follows:

Richard T. Matthews
Myers Bigel Sibley & Sajovec, P.A.
4140 Parklake Avenue, Ste. 600
Raleigh, NC 27612
Attorneys for the Petitioner

This the 13th day of March, 2014.

/David A. Harlow/
David A. Harlow
NCSB # 1887
USPTO #: 37,146
MANNING, FULTON & SKINNER, P.A.
P. O. Box 20389
Raleigh, NC 27619-0398
Telephone: (919) 787-8880
Facsimile: 919-325-4659
Email: harlow@manningfulton.com
Counsel for Registrant BIOGALA AB